

**NATIONS UNIES  
HAUT COMMISSARIAT DES NATIONS UNIES  
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU  
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS  
OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE  
HUMAN RIGHTS COUNCIL**

**Mandate of the Special Rapporteur on the human rights of migrants.**

REFERENCE: AL G/SO 214 (106-10)  
USA 17/2011

16 September 2011

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the human rights of migrants pursuant to Human Rights Council resolution 17/12. As you may be aware, I took up my functions on 1 August 2011 following my nomination by the President of the Human Rights Council at its 17th session in June 2011.

I would like to first and foremost acknowledge and welcome the memorandum issued by the US Immigration and Customs Enforcement (ICE) on 17 June 2011, which provides the basis for a new immigration policy of the United States of America (USA). I am particularly pleased to note that the memorandum identifies vulnerable groups of irregular migrants and victims of human rights violations as cases which should be given “prompt particular care and consideration” in the exercise of prosecutorial discretion in enforcing civil immigration laws. Specifically, the memorandum states that in identifying cases to be reviewed as early as possible, “prompt particular care and consideration” should be given to minors and elderly individuals, pregnant or nursing women, victims of domestic violence, trafficking, or other serious crimes, and individuals who suffer from a serious mental or physical disability and individuals with serious health conditions.

Similarly, I am pleased to note that the memorandum identifies individuals present in the USA since childhood among the cases to be considered promptly. In the exercise of prosecutorial discretion, a person’s pursuit of education in the USA and arrival in the country as a young child will be considered. As a result, the new policy acknowledges the valuable contribution of the young immigrant population to society and responds to their legitimate aspirations to integrate into the USA. Further, I note as positive that the new policy will support family unity by considering whether a person has a US citizen or permanent resident spouse, child or parent.

In this regard, I wish to welcome your Excellency’s Government’s announcement on 18 August 2011 of the new policy which prioritizes deportation of irregular migrants

who pose a clear threat to national security and/or public security or who have lengthy criminal record and/or egregious record of immigration violations. I note with utmost satisfaction that deportation proceedings against irregular migrants who do not fall into any of these categories will be suspended and subject to individual review. According to information received, the number of deportation cases to be reviewed amount to 300,000.

In this connection, I would like to seek information from your Excellency's Government relating to the situation, treatment and status of irregular migrants in the USA. In particular, I would like to request information on the measures that your Excellency's Government has taken, or intends to take, with a view to enact comprehensive federal legislation which will ensure that the human rights and fundamental freedoms of migrants living in the USA are upheld and protected. I would also like to receive information on progress made by the United States Senate with respect to the enactment of the Development, Relief, and Education for Alien Minors Act (DREAM Act). The DREAM Act would offer conditional lawful permanent residence status to people who entered the USA as children, lived in the USA for at least five years, are of good moral character, and have been admitted to an institution of higher education, graduated high school, or received a GED.

In relation to the above, I would like to remind your Excellency's Government that the enjoyment of the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR), ratified by the USA on 19 June 1992, is not limited to citizens of States parties but "must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10). I further wish to recall article 2(2) of the Convention on the Rights of the Child, signed by your Excellency's Government on 16 February 1995, which provides that all appropriate measures shall be taken "to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members".

The importance of putting in place a solid system of legal protection at the federal level is even more important in view of the recent enactment of immigration laws at state level which run counter to the international human rights obligations of the USA. On 10 May 2010, you will recall that serious concern was expressed by the former mandate-holder and several other special procedures mandate-holders<sup>1</sup> with respect to Arizona immigration law (SB 1070) and its compatibility with international human rights treaties ratified by the USA.

<sup>1</sup> The Special Rapporteurs on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, on the situation of human rights and fundamental freedoms of indigenous people, the right to education and the Independent Experts in the field of cultural rights and on minority issues, respectively.

In this regard, it has been reported that other states have enacted similar laws which have in common the investigation and detention of persons who are suspected of living or working irregularly in the USA. According to information received, these laws are not accompanied with clear standards to guide law enforcement personnel in the identification of undocumented migrants. The states concerned are Alabama (HB 56, "Alabama Taxpayer and Citizen Protection Act"), Georgia (HB 87), Indiana (SEA 590), South Carolina (SB 20) and Utah (HB 87). According to information received, the laws in question all base their investigation and detention provisions on "reasonable suspicion", as was the case with the Arizona immigration law.

The Alabama Taxpayer and Citizen Protection Act of 9 June 2011 is of particular concern to my mandate. The law severely undermines the right to education of migrant children (section 28), obstructs the enforcement of any contracts between a party and "an alien unlawful in the United States" (section 27), criminalizes the entering into any "business transaction" by an "unlawfully present alien" with a government agency (section 30) and criminalizes the entering into rental agreement if undertaken with the knowledge that the alien is "unlawfully present" in the USA (section 13). The Act further allows law enforcement officers to verify the person's immigration status where, "upon any lawful stop, detention or arrest", "reasonable suspicion exists that the person is an alien unlawfully present" (section 12). Section 19 of the law requires status verification for anyone who is "charged with a crime for which bail is required" or "confined for any period in a state, county, or municipal jail". In this regard, I note with serious concern the provision stipulating that "if the person is determined to be an alien unlawfully present in the United States, the person shall be [denied bail] ... and shall be detained until prosecution or until handed over to federal immigration authorities".

While noting that the Alabama Taxpayer and Citizen Protection Act, expected to have entered into law on 1 September 2011, has been temporarily suspended for 30 days by an order of a federal court, I would be grateful to receive information on measures taken, or intended to be taken, to ensure that this and other aforementioned laws are entered into force only insofar as they comply with the international human rights obligations of the USA.

Allow me to recall in this regard the obligation of the USA under the ICCPR to ensure to all persons deprived of their liberty the right to control by a court of the legality of the detention (art. 9, para. 4) and that any person arrested or detained has the right to be brought "promptly" before a judge or other officer authorized by law to exercise judicial power (art. 9, para. 3). Section 19 of the HB 56 Alabama Taxpayer and Citizen Protection Act, which seems to allow for indefinite detention, may hence be in violation of article 9 of the ICCPR.

I also wish to recall that the USA, as a State party to the International Convention on the Elimination of All forms of Racial Discrimination (ICERD), has undertaken to “engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation” (art. 2, para. 1).

Allow me also to remind your Excellency’s Government of General Assembly resolution 65/212 (2010) in which Member States stress “the importance of regulations and laws regarding irregular migration being in accordance with the obligations of States under international law, including international human rights law”. The same resolution stresses the obligation of States to “protect the human rights of migrants regardless of their migration status” and expresses concern at “measures which, including in the context of policies aimed at reducing irregular migration, treat irregular migration as a criminal rather than an administrative offence where the effect of doing so is to deny migrants full enjoyment of their human rights and fundamental freedoms.”

In conclusion, allow me to reiterate the main issues on which I would be most grateful for your cooperation and observations:

1. Steps taken towards the establishment of a comprehensive national legislative framework which ensures protection of the human rights of all migrants, irrespective of their migration status;
2. Measures undertaken to implement the recommendations outlined in the report of the previous mandate-holder following his visit to the USA from 30 April to 18 May 2007 (A/HRC/7/12/Add.2), in particular those set out in paragraphs 110, 113, 116, 117, 122, 124, 126, and 131 of the report;
3. Progress in enacting the DREAM Act by the United States’ Senate; and
4. Measures undertaken, or intended to be taken, to ensure that immigration laws at state level, in particular in Alabama (HB 56 Alabama Taxpayer and Citizen Protection Act), Georgia (HB 87), Indiana (SEA 590), South Carolina (SB 20) and Utah (HB 87), are entered into force only insofar as they comply with the international human rights obligations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all issues brought to my attention, I would be grateful to receive the information requested above within 30 days so that your responses may be accurately reflected in the report I will submit to the Human Rights Council.

I remain at your disposal for any further clarification you may require and hope to be able to continue this constructive dialogue with you and your Excellency’s

Government. Please note that I can be contacted through the through the Office of the High Commissioner for Human Rights (Ms. Katarina Månsson at [kmansson@ohchr.org](mailto:kmansson@ohchr.org), and Ms. Federica Donati at [fdonati@ohchr.org](mailto:fdonati@ohchr.org), tel: + 41 22 917 9127/+ 41 22 917 9496; or any of them at: [migrant@ohchr.org](mailto:migrant@ohchr.org)).

Please accept, Excellency, the assurances of my highest consideration.

François Crépeau  
Special Rapporteur on the human rights of migrants